

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

Hearing Date
July 31, 2000, at 10:00 a.m.

	x	
In re	:	
	:	Chapter 11
RANDALL'S ISLAND FAMILY GOLF	:	Case Nos. 00-41065 (SMB)
CENTERS, INC., <i>et al.</i> ,	:	through 00-41196 (SMB)
	:	(Jointly Administered)
Debtors.	:	
	x	

**OBJECTION OF IRVIN AND EVELYN DEGGELLER, IRVIN DEGGELLER
REVOCABLE TRUST OF 1994, AND EVELYN DEGGELLER REVOCABLE TRUST
OF 1994 TO MOTION FOR ORDERS PURSUANT TO SECTIONS 105, 363 AND 1146
OF THE BANKRUPTCY CODE AND BANKRUPTCY RULES 2002, 6004, 6006 AND
6007 (I)(A) AUTHORIZING AND APPROVING (I) SALE OF CERTAIN FEE-OWNED
PROPERTIES, (II) ASSUMPTION, SALE AND ASSIGNMENT OF CERTAIN
LEASEHOLD INTERESTS, AND (III) SALE OF RELATED PERSONAL PROPERTY,
FREE AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES, AND INTERESTS AND
EXEMPT FROM ANY STAMP, TRANSFER, RECORDING OR SIMILAR TAX, (B)
APPROVING CERTAIN SALE PROCEDURES TO BE USED IN CONNECTION WITH
SUCH SALES, (C) APPROVING THE FORM OF SALE AND ASSIGNMENT
AGREEMENTS, (D) AUTHORIZING THE PAYMENT OF BROKERS' FEES IN
CONNECTION WITH SUCH SALES, (II) IN THE EVENT THAT PROPERTIES
REMAIN UNSOLD AT THE CONCLUSION OF THE OMNIBUS SALE HEARING,
AUTHORIZING AND APPROVING THE ABANDONMENT OF UNSOLD FEE-OWNED
PROPERTIES AND THE REJECTION OF UNSOLD LEASEHOLD INTERESTS, AND
(III) SCHEDULING AN EXPEDITED HEARING TO CONSIDER SHORTENING THE
TIME FOR, FIXING THE DATE, TIME AND PLACE FOR, AND APPROVING THE
FORM AND MANNER OF NOTICE AND HEARING ON SUCH SALES**

TO THE HONORABLE STUART M. BERNSTEIN,
UNITED STATES BANKRUPTCY JUDGE:

Irvin and Evelyn Deggeller, individually and as trustees of the Irvin Deggeller Revocable Trust of 1994 and the Evelyn Deggeller Revocable Trust of 1994 (collectively, "Landlord"), by its attorneys, Robinson Brog Leinwand Greene Genovese & Gluck PC, objects to the *Motion for Orders Pursuant to Sections 105, 363 and 1146 of the Bankruptcy Code and Bankruptcy Rules 2002, 6004,*

6006 and 6007 (i)(A) Authorizing and Approving (i) Sale of Certain FeeOwned Properties, (ii) Assumption, Sale and Assignment of Certain Leasehold Interests, and (iii) Sale of Related Personal Property, Free and Clear of Liens, Claims, Encumbrances, and Interests and Exempt from any Stamp, transfer, Recording or Similar Tax, (B) Approving Certain Sale Procedures to be Used in Connection with Such Sales, (C) Approving the Form of Sale and Assignment Agreements, (D) Authorizing the Payment of Brokers' Fees in connection with Such Sales, (II) in the Event that Properties Remain Unsold at the Conclusion of the Omnibus Sale Hearing, Authorizing and Approving the Abandonment of Unsold FeeOwned Properties and the Rejection of Unsold Leasehold Interests, and (III) Scheduling an Expedited Hearing to Consider Shortenign the Time for, Fixing the Date, Time and Place for, and Approving the Form and Manner of Notice and Hearing on Such Sales (the "Motion") and seeks the entry of an order denying the Motion with respect to the debtor Blue Eagle of Florida, Inc. (the "Debtor") and the Debtor's lease of certain non-residential real property from Landlord. In support thereof, Landlord states:

PRELIMINARY STATEMENT

1. As set forth in more detail below, Landlord objects to the Motion, and specifically objects to the proposed sale procedures set forth therein, upon the ground that they fail to afford Landlord sufficient notice or opportunity to protect and defend its rights pursuant to, *inter alia*, section 365 of the Bankruptcy Code. The *sine qua non* for assumption and assignment of an unexpired lease pursuant to section 365 is the cure of any outstanding defaults, and the provision of adequate assurance of future performance.

2. The procedures proposed by the Debtor seek to railroad Landlord's rights by failing to provide Landlord with a meaningful opportunity to review the *bona fides* and financial wherewithal

of any entity proposed to purchase the Debtor's interest in its lease with Landlord. Without a meaningful opportunity to review financial information and make a reasoned objection based thereupon, Landlord can not make an informed objection with respect to a potential purchaser and this Court will be forced to determine the reasonableness of any proposed purchaser in a vacuum.

JURISDICTION AND VENUE

3. Jurisdiction over this civil action is vested in the United States District Court for this District pursuant to sections 1334 of title 28 of the United States Code (the "Judicial Code") .

4. This civil action has been referred to this Court for consideration pursuant to section 157 of title 28 of the United States Code (the "Judicial Code") and the *Standing Order of Referral of Cases to Bankruptcy Judges* (S.D.N.Y. July 10, 1984) (Ward, Acting C.J.).

5. This is a core proceeding arising under title 11 of the United States Code or arising in a case under title 11 of the United States Code. *See* 28 U.S.C. § 157(b)(1). The statutory predicate for the relief sought by the Debtor herein is section 365 of the Bankruptcy Code.

6. Venue of this civil proceeding in this district is proper pursuant to section 1409 of the Judicial Code.

BACKGROUND

THE DEBTOR

7. The Debtor is a Delaware corporation doing business at 225 Broadhollow Road, Suite 106E, Melville, New York 11747.

THE LEASE

8. On or about July 26, 1997, Landlord, as landlord, and the Debtor, as tenant, entered into an *Agreement of Lease* (the "Lease") with respect to certain real and personal property located

in the town of Stuart, Martin County, Florida and more particularly described therein (the “Golf Course”).

THE BANKRUPTCY CASE

9. On May 4, 2000, the Debtor commenced this case under chapter 11 of the Bankruptcy Code by filing a voluntary petition for relief with this Court.

10. No trustee or examiner has been appointed. A committee of creditors has been appointed and has retained counsel.

DISCUSSION

11. Landlord objects to the relief requested by the Debtors to the extent that such relief deprives Landlord of its right to receive (i) the cure or the adequate assurance of the prompt cure of presently existing defaults, (ii) compensation for or adequate assurance of compensation for actual pecuniary loss resulting from existing defaults, and (iii) adequate assurance of future performance under the Lease. Satisfaction of these rights is a condition precedent to approval of the Motion. 11 U.S.C. § 365(b)(1); *cf. In re Wingspread Corp.*, 116 B.R. 915 (Bankr. S.D.N.Y. 1990).

12. In that connection, Landlord believes that any order approving the assumption and assignment of the Lease should not be entered until Landlord has had a reasonable opportunity to assess the ability of any proposed assignee to cure past defaults, compensate Landlord for pecuniary losses and provide “adequate assurance” of future performance within the meaning of sections 365(b)(1) and 365(b)(3) of the Bankruptcy Code..

CURE AND ADEQUATE ASSURANCE OF FUTURE PERFORMANCE

13. An intended assignee must demonstrate that it has the ability to satisfy the financial obligations imposed by the Landlord Lease. *See In re Lafayette Radio Electronics Corp.*, 9 B.R. 993

(Bankr. E.D.N.Y. 1981); *In re Bygaph, Inc.*, 56 B.R. 596 (Bankr. S.D.N.Y. 1986); *In re Evelyn Byrnes, Inc.*, 32 B.R. 825 (Bankr. S.D.N.Y. 1983).

14. Unless and until such assurances are provided and are determined by this Court to be adequate, the assumption and assignment of the Landlord Lease is prohibited. 11 U.S.C. § 365(b). Assurances are particularly significant where no buyer has been identified and, consequently, no balance sheet or past credit history has been or can be provided.

15. The Debtor has not identified any potential assignee, and has failed to provide Landlord with any information concerning such an entity.

16. The Motion does not provide Landlord with any financial information from which Landlord can determine whether a proposed assignee can provide adequate assurance of future performance under the Lease. Landlord submits that the question of adequate assurance is one which must be determined by the Court upon reasonable notice, sufficient to allow Landlord to obtain and review, and if necessary take discovery with respect to and object to, the financial statements of any allegedly successful purchaser.

17. Without an opportunity to review such information, Landlord cannot determine whether it is sufficient to provide the types of adequate assurance required pursuant to sections 365(b)(1)(C) and 365(f)(2)(B) of the Bankruptcy Code.

TIMELINESS OF INFORMATION

18. The Motion's failure to provide for the timely delivery of such information to Landlord prohibits Landlord from obtaining such assurances and determining whether they are adequate or objectionable. Accordingly, it does not appear that Landlord will have an adequate opportunity to

determine if the required assurances could be or have been met by the successful bidder, or to raise any questions in that regard to the Court's attention.

19. In order to assess the ability of a prospective assignee to provide it with adequate assurance of future performance, Landlord will require appropriate disclosure and proof of any successful bidder's financial wherewithal and ability to timely perform all of the covenants and conditions of the Lease (the "Required Information"). Landlord believes that it will require a minimum of thirty days from its receipt of the Required Information to perform its due diligence with respect to any prospective assignee of the Lease. However, it is not possible for Landlord to review the financial wherewithal, plans and *bona fides* of proposed assignees who have not yet been disclosed.

20. To the extent that the Debtor accepts an offer for the assumption and assignment of its interest in the Lease, Landlord submits that this Court ought to delay entry of an order approving such assumption and assignment until Landlord has had a minimum of thirty days' opportunity (from its receipt of the Required Information) to do its due diligence with respect to such entity and to file an appropriate objection pursuant to sections 365(b)(1) and (b)(3) of the Bankruptcy Code.

CONCLUSION

21. No previous application for the relief requested herein has been made to this or any other Court.

22. As there are no novel issues of law in connection with the relief sought hereby, and the legal authorities are set forth herein, Landlord requests that the Court waive any requirement for the filing of a separate memorandum of law in support of this motion.

WHEREFORE, Landlord seeks the entry of an order denying the Motion and granting such other and further relief as is just and appropriate.

Dated: New York, New York
July 28, 2000

ROBINSON BROG LEINWAND GREENE
GENOVESE & GLUCK P.C.
Attorneys for Landlord
1345 Avenue of the Americas
New York, New York 10105
(212) 586-4050

By: /s/ Michael S. Schreiber
Michael S. Schreiber (MSS- 5398)